

**Speech-Language Pathology and Audiology Board**

1422 HOWE AVENUE, SUITE 3, SACRAMENTO, CA 95825-3204

TELEPHONE: (916) 263-2666/ FAX: (916) 263-2668

www.slpab.ca.gov



**STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY BOARD
Department of Consumer Affairs
Medical Board of California
1424 Howe Avenue
Greg Gorges Conference Room "F"
Sacramento, CA 95825
May 10, 2002
MINUTES**

Members Present

Alison Grimes, M.A., Chairperson
Sherry Washington, M.A.
Rebecca Bingea, M.A.
James Till, Ph.D.
Marcia Raggio, Ph.D.
Bruce Gerratt, Ph.D.

Staff Present

Annemarie Del Mugnaio, Executive Officer
Candace Raney, Staff Analyst
Lori Newman, Staff Analyst
George Ritter, Staff Counsel

Members Absent

Vivian Shannon, M.A.
Paul Donald, M.D.

Guests Present

Robert Powell, California Speech-Language Hearing Association
Rebecca Leonard, UC Davis
Gretchen KJose, Executive Officer, Occupational Therapy Board
Taryn Smith, Department of Consumer Affairs

I. Call to Order

Chairperson Grimes called the meeting to order at 12:10 p.m.

II. Introductions

Those present introduced themselves.

III. Approval of March 8, 2002 Board Meeting Minutes

The Board discussed minor grammatical edits to the minutes.

M/S/C: Washington/Raggio

The Board approved the March 8, 2002 Board Meeting minutes as amended.

IV. Chairperson's Report

Ms. Grimes reported on her attendance at the meeting of the American Academy of Audiology held in Philadelphia, Pennsylvania in April.

Ms. Grimes explained that this meeting is the largest meeting of audiologists in the world and in excess of 7000 attendees were present.

Ms. Grimes stated there were many issues discussed including professional ethics, the increasing role of audiologists in providing vestibular rehabilitation, HIPAA requirements, and progress on the formation of a new accreditation body for Au.D. programs.

Ms. Grimes stated that the Academy has been increasingly aware and devoted to the issue of professional ethics. The American Board of Audiology requires that a certain number of units of mandatory continuing education be obtained in the area of professional ethics to maintain Board certification.

In addition, last year the Academy President established a special task force on professional ethics. The task force presented its report at the April meeting. The report focused on the relationship of audiologists and hearing aid manufacturers. She explained that the task force identified areas of concern and activities of potential conflict that should be avoided by audiologists and stated that these areas may be viewed differently between audiologists and consumers.

Ms. Grimes stated that many audiologists are unaware of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its mandates. She stated that the Academy is preparing to publish educational information relative to HIPAA.

Ms. Grimes recommended that the Board add a link to its website that would provide information on HIPAA and its requirements for practicing professionals.

V. Committee Reports

A. Audiology Practice Committee

Ms. Bingea stated that the Audiology Practice Committee discussed pending legislation including AB 1914. The bill, as proposed, would allow licensed hearing aid dispensers to provide and bill for hearing aid “assessments.” Current law allows only a physician or an audiologist to bill for hearing aid tests. This bill does retain the current requirement for audiological evaluation to be performed by an audiologist or a physician.

Ms. Bingea stated that this Board submitted a letter of opposition to AB 1914 in its original form back in April 2002. As a result of amendments to the bill, the Audiology Practice Committee recommended to the Board that a letter indicating a neutral position be submitted. Ms. Bingea stated that the basis for the recommendation is that the amendments are unclear regarding the term “hearing aid assessment.” Therefore, the Board is unable to determine if this may be a consumer protection issue.

Ms. Bingea stated that the committee also discussed SB 1638 regarding mandated hearing aid coverage by healthcare plans for individuals under 18 years old. She explained that this bill is scheduled for hearing in the Senate Appropriations Committee on May 15, 2002. The Audiology Practice Committee agreed to support the concept of this bill. The Committee recommended to the Board that a letter of support be submitted to the appropriate policy committee.

Ms. Bingea stated that the Committee also discussed AB 2884 which adds a section to the Health and Safety Code and Insurance Code requiring hearing aid coverage by healthcare plans including disability insurers to all subscribers that includes one hearing aid per hearing impaired ear, up to a cost of \$1200 per hearing aid, every 46 months. This bill has been suspended and no further hearings are scheduled at present. The Committee recommended to the Board that a letter of support be submitted to the author regarding the concept of AB 2884.

Ms. Bingea stated that Ms. Del Mugnaio provided an update to the Committee on her review of states regulating intraoperative monitoring. Ms. Del Mugnaio found that there are currently no states that include intraoperative monitoring in their practice act. Ms. Grimes and Ms. Del Mugnaio sent correspondence to Dr. Robin Vaughan informing Dr. Vaughan that the Board would support any effort on his part to develop proposed legislation relative to regulating the practice of intraoperative monitoring.

Ms. Bingea stated that the Committee also reviewed items for the Board’s upcoming Sunset Review Report.

Ms. Raggio requested that each Board Member submit their individual responses to her relative to the pertinent topics and questions. She requested that these responses be submitted to her within the next three months.

M/S/C: Raggio/Till

The Board accepted the report and recommendations of the Audiology Practice Committee.

B. Speech-Language Pathology Practice Committee

Mr. Till reported that the Speech-Language Pathology Practice Committee met to discuss the status of various topics assigned to the committee for review.

Mr. Till stated that the Committee reviewed SB 1379 as amended on April 18, 2002. The Board discussed the amendments and voted to recommend to the full Board to direct the Executive Officer to draft a letter in support of SB 1379 as amended.

Mr. Till stated that the Committee also discussed a legal analysis prepared by legal counsel, George Ritter, regarding the issue of speech-language pathologists performing deep suctioning.

He explained that Mr. Ritter concluded in his analysis that, at present, deep suctioning is not within the scope of practice of a speech-language pathologist. The committee discussed the possibility of readdressing this issue pending the outcome of SB 1379 as the amendments to the enabling statute included in the bill may provide the authority that the Board needs to adopt implementing regulations relative to deep suctioning. The committee voted to direct the Executive Officer to include the matter for discussion on a future agenda pending the outcome of SB 1379.

Mr. Till stated that the committee also reviewed a request from the McGuire Program of Nevada to determine whether course offerings of this program in California may constitute an unlicensed or unlawful activity. After discussion of potential issues related to this activity, the committee voted to recommend to the full Board to direct the Executive Officer and Board staff to obtain additional information related to these activities. This recommendation was based upon the conclusion by the committee that, at this point, the committee does not have enough information regarding the program and its activities to respond to their request.

M/S/C: Gerratt/Bingea

The Board accepted the report and recommendations of the Speech-Language Pathology Practice Committee.

VI. Executive Officer's Report

A. Budget Update

Ms. Del Mugnaio provided the Board with a copy of the most recent analysis of the Board's budget. She stated that most of the unencumbered reserve, \$5,102, has been consumed by an outstanding unemployment claim as well as other operating expenses.

Ms. Del Mugnaio explained that the enforcement costs incurred by the Board were above the budgeted amount due to a substantial increase in enforcement activity.

Ms. Del Mugnaio stated the Board must use caution as there will be no budget reserve this fiscal year.

Ms. Del Mugnaio stated that the Board's budget, as proposed for fiscal year 2002/2003, includes an increase in appropriated funds for pro rata. The increase is reflective of an increase in administrative costs by the Department.

B. Regulation Update

Ms. Del Mugnaio stated that the Board's proposed regulations relative to Required Professional Experience Temporary License have been filed with the Office of Administrative Law and a hearing on the matter is scheduled for June 18, 2002 from 1:30 pm to 3:30 pm. The hearing will be held at the Department of Consumer Affairs, first floor hearing room. Thus far, there have been no written comments submitted regarding the proposed regulatory package.

C. Report from Hearing Aid Dispenser's Advisory Committee Meeting

Ms. Del Mugnaio stated that she attended the Hearing Aid Dispenser's Advisory Committee meeting on April 12, 2002. She distributed various handouts to the Board that were provided at the Advisory Committee meeting.

Ms. Del Mugnaio stated that members of the Advisory Committee expressed an interest in attending an upcoming Speech-Language Pathology and Audiology Board meeting to observe the manner in which the Board conducts its meetings and to gain insight in current Board issues. Ms. Marva Johnson-Wright, Advisory Committee Chairperson, requested that Ms. Del Mugnaio contact Terri Ciau, Chief of the Hearing Aid Dispenser Bureau, and inform her as to the Board's fall meeting schedule. Following the Advisory Committee meeting, Ms. Del Mugnaio received correspondence from Ms. Johnson-Wright indicating that the Committee is not prepared to entertain cross-cutting issues with SLPAB and therefore will attend a meeting at a future date.

Ms. Del Mugnaio stated that the Advisory Committee discussed AB 1914 at the meeting but did not take a position on the bill. The Advisory Committee was advised by the public members in attendance that the bill will be amended as a result of the discussions between the California Academy of Audiology and the Hearing Health Care Providers of California and, therefore, any discussion regarding the current language would be moot.

D. Update on Status of Attorney General Review of Section 650

Ms. Del Mugnaio stated that Supervising Deputy Attorney General, Carlos Ramirez, has reviewed the legal opinion rendered by George Ritter relative to Section 650 of the Business and Professions Code and is in agreement with Mr. Ritter's conclusion. Mr. Ramirez also indicated that if the Board were to forward an investigation that included

substantiated violations of Section 650 to the Office of the Attorney General for prosecution, the Office would move forward with disciplinary proceedings.

E. Report from California Speech-Language-Hearing Associations Annual Conference

Ms. Del Mugnaio stated that Board staff attended the California Speech-Language-Hearing Association's Annual Conference and answered many questions related to licensing, enforcement, continuing professional development, etc.

F. Report on Status of the Occupational Therapy Board's Proposed Regulations for Feeding and Swallowing

Ms. Del Mugnaio introduced Gretchen Kjose, Executive Officer, Occupational Therapy Board and asked Ms. Kjose to provide the Board with information and a status update on the development of Occupational Therapy Board regulations regarding advanced practices for swallowing procedures performed by occupational therapists.

Ms. Kjose explained that the Board has been very busy in processing applications for licensure and issuing new licenses. She stated that the Board, to date, has licensed 97 occupational therapists and 8 occupational therapy assistants. She also stated that there are currently 1300 pending applications in various stages of the process.

Ms. Kjose explained that the Occupational Therapy Board has requested that amendments to SB 1402 be introduced to remove term "feeding" from the language regarding advanced practices. She stated that the bill has passed through the Appropriations Committee and that the Occupational Therapy Board is in the process of working with groups opposing the bill.

Ms. Kjose stated that the Occupational Therapy Board members have identified areas that they consider to be advanced practices. Those areas include videofluoroscopy, ultrasound, working with neonatal and/or geriatric populations and Fiberoptic Endoscopic Evaluation of Swallowing.

Ms. Kjose stated that the Occupational Therapy Board is aware of the proposed legislation in Senate Bill 1379 and is taking great care in the development of their regulations to avoid any potential conflict.

Ms. Kjose stated that the next meeting of the Occupational Therapy Board is scheduled for June 21, 2002 in Sacramento. She stated that a Regulatory Committee meeting will be held at that time as well.

VII. Enforcement/Licensing Statistical Report

Ms. Raney and Ms. Garrett provided statistical reports relative to the Board's licensing and enforcement activities.

VIII. Legislation

A. SB 1379 – (Speech-Language Pathologists; Endoscopies)

Ms. Del Mugnaio stated that SB 1379 was already discussed in the Speech-Language Pathology Practice Committee.

B. AB 1914 (Medi-Cal – Hearing Aid Coverage)

Ms. Del Mugnaio stated that AB 1914 was already discussed in the Audiology Practice Committee.

C. SB 1402 – Occupational Therapy

Ms. Del Mugnaio explained that SB 1402 does not substantially change the original law that enacted the Occupational Therapy Board. She explained that the legislation addresses advanced practices regarding hand therapy and indicated that forthcoming amendments will remove “feeding” as an advanced practice.

D. SB 1638 – Hearing Aid Coverage – Persons Under 18 Years of Age

Ms. Del Mugnaio stated that SB 1638 was already discussed in the Audiology Practice Committee.

E. AB 2884 – Hearing Aid Coverage

Ms. Del Mugnaio stated that AB 2884 was already discussed in the Audiology Practice Committee.

F. SB 2021 – DCA Omnibus Bill

Ms. Del Mugnaio notified the Board that a letter of support for SB 2021 was sent to the Business and Professions Committee on March 8, 2002. The bill contains amendments to the Board’s laws that removes the Board from the jurisdiction of the Medical Board and places the agency under the umbrella of the Department of Consumer Affairs. Also, the bill enables the Board to collect a fee for license status and history certification letters. Ms. Del Mugnaio stated that the fee for the letter will be established by regulation at \$10 per letter.

G. SB 2025 – Sunset Bill

Ms. Del Mugnaio stated that SB 2025, which extends the Board’s sunset date to January 1, 2006, has been amended but the amendments do not affect the Board.

H. SB 2059 – Public Disclosure

Ms. Del Mugnaio stated that SB 2059 would require that every “Board” within the Department of Consumer Affairs develop regulations by January 2004 establishing a policy for disclosure of information about its licensees and potentially specific complaint information.

Ms. Del Mugnaio explained that later in the meeting, Taryn Smith, Special Aide to the Director of Consumer Affairs, would address the Board and present information regarding the Department’s new Complaint Disclosure Standards.

Ms. Del Mugnaio stated that she will continue to track SB 2059 and provide updates as they become available.

I. Other Legislation of Interest to the Board

SB 2010

Ms. Del Mugnaio stated that SB 2010 would amend Health and Safety Code Section 445 to exempt discount healthcare programs from the provisions of Business and Professions Code Section 650. Ms. Del Mugnaio stated that SB 2010 has been withdrawn by the author, Senator Polanco.

SB 1907

Ms. Del Mugnaio stated that SB 1907 would exempt identified licensees from the provisions of Business and Professions Code Section 650. The exemption covers health care practitioners who establish written personal service arrangements with the recipient of a referral provided that the arrangements contain specified terms and conditions.

Ms. Del Mugnaio stated that in reviewing the analysis of SB 1907, the bill acknowledges that the law, as it is written, refers to healing arts licensees in its prohibition of referrals. She explained that she has a number of concerns with the proposed legislation.

Mr. Powell expressed concern because the intent of the legislation as indicated in the analysis of the bill appears to be in conflict with the actual language of the bill.

Mr. Ritter expressed concern because the proposed legislation is in direct conflict with the prohibitions of Section 650 and expands exemptions provided under federal law.

M/S/C: Washington/Bingea

The Board voted to direct legal counsel to prepare a letter of opposition to SB 1907 expressing the implications of the bill as identified by legal counsel.

SB 1461

Ms. Del Mugnaio stated that SB 1461 defines discount healthcare programs and requires that they abide by the requirements of Knox-Keene and are regulated by the Department of Managed Health Care.

Mr. Powell explained that discount healthcare programs have the potential to mislead and/or abuse the public and should be regulated. He reiterated that this bill is “a work in progress.”

The Board directed the Executive Officer to continue tracking AB 1461.

SB 1292

Ms. Del Mugnaio explained that SB 1292 has been placed in the Appropriations Committee suspense file due to major fiscal implications. This bill would require every Board, Bureau, and Commission under the Department of Consumer Affairs to prepare a fiscal analysis and report of all financial activity dating back to fiscal years 1997/98 through the current fiscal year. This report would be required to be submitted to the Legislature by January 15, 2003 and each subsequent year thereafter by January 15.

SB 2024

Ms. Del Mugnaio stated that SB 2024 would exempt positions that are vacant during the hiring freeze from mandatory abolishment at the point that the position has been vacant for six months.

IX. Required Professional Experience (RPE) Review Process – Implementation of Amendments in SB 1379 Pertaining to Approval of the RPE Plan

Ms. Del Mugnaio explained that SB 1379 amends the Board’s current law by eliminating the requirement for prior approval by the Board for a change in the RPE plan and requires that all persons obtaining the experience for licensure whether in an exempt or non-exempt setting apply for the RPE Temporary License by July 2003.

Ms. Del Mugnaio explained that currently the Board requires notification and approval prior to any change in setting or supervisor by the RPE applicant.

Ms. Del Mugnaio explained options for implementing the new law and explained the proposed policy to require the RPE to submit one final verification form at the end of the experience including information relative to each setting and supervisor. The verification would be evaluated and any deficiencies noted would be acknowledged. The RPE would be required to correct the deficiencies within one year.

Ms. Del Mugnaio stated that Board staff would amend the RPE Temporary License application packet and approval letter to inform the RPE applicant of their responsibility to meet all requirements. The new information would notify applicants that any deficiencies noted in the final review of the verification form would require correction.

The Board discussed the matter and decided to change the policy of requiring notification of all changes and approval prior to the change becoming effective. This would decrease workload for the Board and increase flexibility for the RPE applicant.

M/S/C: Bingea/Till

The Board voted to eliminate the requirement for temporary license holders to notify the Board of each change that may occur throughout the course of the required professional experience period. Instead the RPE will submit the final verification form at the end of the experience indicating all settings and supervision applicable during the experience. Board staff will modify or amend license applications and supporting documents to include statements regarding the RPE's responsibility for ensuring that all requirements are met throughout the course of the experience and, in the event that a deficiency is identified after Board review of the verification form, the RPE will be required to complete additional experience. The new RPE packets will also include information on how to use the Board's internet license verification feature to check the status of a supervisor's license, as well as an acknowledgement statement included on the application form that certifies that the RPE has received and understands the terms of the RPE Temporary License.

X. Proposed amendments to the SLPAB Strategic Plan for 2003

Ms. Del Mugnaio explained that the document provided in the Board packet is the Board's current strategic plan with amendments to update the plan for 2003.

Ms. Del Mugnaio asked the Board members to review the document and provide comments. She explained that she would incorporate the Board's comments and submit the final draft to the Board Chair for review before finalizing the document for submission to the Department by June 1, 2002.

The Board reviewed the document and discussed various past accomplishments and future goals of the Board for inclusion into the 2003 Strategic Plan.

M/S/C: Bingea/Raggio

The Board directed the Executive Officer to amend the Strategic Plan according to the discussion and recommendations of the Board; submit the amended document to the Board Chair for final review; and, upon completion, submit the document to the Department.

XI. Review of Board's Amended Complaint Disclosure Policy

A. Review Department of Consumer Affairs' Proposed Standards for Consumer Complaint Disclosure

Taryn Smith, Special Aide to the Director of the Department of Consumer Affairs, presented information to the Board regarding the Department's efforts relative to complaint disclosure.

Ms. Smith explained that the Department has been exploring the issue of complaint disclosure for quite some time. She stated that complaint disclosure is defined by the Department as the manner in which an agency chooses to disclose complaint history information about its licensees to inquiring consumers.

Ms. Smith explained that the Department began researching the issue of complaint disclosure because complaint disclosure is a very valuable tool for the public. The Department's intent is to standardize, as much as possible, the complaint disclosure process throughout the various "Boards" under the Department.

Ms. Smith stated that, in the development of the Department's "Proposed Standards for Consumer Complaint Disclosure," the Department solicited information from many sources including various professional associations, law enforcement agencies, consumer groups, victims, and individual licensees, etc.

Ms. Del Mugnaio reiterated that given the variance in professions regulated by the Department, the standards for complaint disclosure will vary according to the dynamics of the regulated industry.

Ms. Smith explained that the policy proposed by the Department has been amended many times and is a work in progress but is nearing completion.

Ms. Smith explained that the "Proposed Standards for Consumer Complaint Disclosure" in its current form includes "minimum standards for consumer complaint disclosure." These "minimum standards" include disclosure of consumer complaints only where there is a true consumer transaction involved, an opportunity for the "business" to respond to the complaint, a requirement that a probable violation of law has occurred or that there is a possible risk of harm to the public, and it has been determined that the complaint will be referred for legal action.

Ms. Del Mugnaio explained that the Board's current complaint disclosure policy requires the disclosure of complaints once they have been referred to the Office of the Attorney General for formal disciplinary action and an accusation has been filed. In addition, the Board's current complaint disclosure policy states that the Board will release information relative to "...the issuance of citations once the fine is paid, the action is abated, or upon the expiration of the 30 day period from the date of issuance if no request for a formal hearing has been received, whichever date first occurs."

Ms. Smith stated that one of the goals identified by the Department during its recent strategic planning session is to provide consumer assistance training for individuals throughout the Department.

Ms. Del Mugnaio stated that she will include the matter of possible amendment of the Board's Complaint Disclosure Policy on a future agenda for Board discussion.

B. Access to Citation Information on Internet

Ms. Del Mugnaio stated that the Board's Complaint Disclosure Policy states that certain information relative to citation and fine is public information and will be disclosed to inquiring consumers. However, citations are not currently listed on the Board's website under the license verification link as disciplinary action taken.

Ms. Del Mugnaio expressed concern regarding the inconsistency in information available to inquiring consumers that may contact the Board via telephone and that which is currently available on the Board's website.

Ms. Del Mugnaio recommended that the Board include generic citation information on the Board's website with a disclaimer informing consumers that the information listed indicates that a citation has been issued and that if further information is desired, the individual may contact the Board directly.

Mr. Ritter stated that, according to the Public Records Act, if someone calls the office for information, the agency has a legal obligation to respond. However, the same requirement does not currently apply to information posted on the website.

M/S/C: Washington/Raggio

The Board voted to post citation information on the Board's website including a disclaimer directing those individuals with additional questions to contact the Board.

XII. Licensing Examinations

A. Review of Proposed Language for Supplemental Examination on California Laws and Regulations

Ms. Del Mugnaio stated that the Department and the Legislature have not supported the adoption of supplemental examinations for other Boards and Bureaus as reflected in prior sunset review recommendation reports.

Mr. Till recommended that this item be tabled at this time with the reservation that if the Board wishes to reopen discussion on the matter at some point in the future, they may do so. The Board agreed.

B. Update on Examination Validation Correspondence with the American Speech-Language-Hearing Association

Ms. Del Mugnaio explained that in October 2001, the Board submitted correspondence to the American Speech-Language-Hearing Association outlining its concerns regarding the content of the national examination as identified during the Board's audiology validation study conducted in 2001. ASHA submitted a response to the Board's concerns.

Ms. Del Mugnaio recommended that this matter be placed on a future agenda and be discussed in concert with ASHA's new standards for clinical competence effective 2005.

XIII. Meeting Calendar 2003

The Board tentatively scheduled the first two meetings of 2003 for January 16 & 17, 2003 to be held in Los Angeles and April 25 & 26, 2003 to be held in Sacramento.

XIV. Public Comment on Items not on the Agenda

There were no additional public comments.

XV. Announcements

Next Board Meeting is September 13, 2002 in San Francisco

The next Board meeting is scheduled for September 12 & 13, 2002 to be held in San Francisco, California.

XVI. Closed Session (pursuant to Government Code Subsections 11126(c)(3) - Proposed Decisions/Stipulations/ Other APA Enforcement Actions

THE BOARD WENT INTO CLOSED SESSION TO DELIBERATE ON DISCIPLINARY CASES PURSUANT TO GOVERNMENT CODE SUBSECTIONS 11126(c)(3).

The Board reconvened to open session.

XVII. Open Session/ Adjournment

There being no additional items for discussion, Chairperson Grimes adjourned the meeting at 5:07 p.m.

Annemarie Del Mugnaio, Executive Officer